

Gary Raymond Harvey, *Sui Juris*
c/o P.O. Box 177
Peck 83545
IDAHO, USA

In Propria Persona

**All Rights Reserved
without Prejudice**

UNITED STATES DISTRICT COURT

DISTRICT OF IDAHO

UNITED STATES OF AMERICA [<i>sic</i>],)	
	)	CASE NO. <u>3:11-cr-194-BLW</u>
Plaintiff)	
	)	MANDATORY JUDICIAL NOTICE
v.	)	TERMINATING FORMAL LEGAL
	)	REPRESENTATION BY ATTORNEY:
Gary Raymond Harvey,)	
	)	5 U.S.C. 2903, 2906, 3331;
Defendant	)	28 U.S.C. 530B, 453, 544, 951, 1691;
	)	44 U.S.C. 3512; and,
	)	FREV Rule 201(c)(2).
_____)	

Comes now Gary Raymond Harvey, *Sui Juris*, proceeding *In Propria Persona nunc pro tunc* (retroactively) at least to August 16, 2011, to demand mandatory judicial notice by this honorable Court, and to provide formal Notice to all interested party(s), of this His MANDATORY JUDICIAL NOTICE TERMINATING FORMAL LEGAL REPRESENTATION BY ATTORNEY.

In Black's Law Dictionary, Sixth Edition, the term "*in propria persona*" is correctly defined as follows:

In propria persona. In one's own proper person. It was formerly a rule in pleading that pleas to the jurisdiction of the court must be plead *in propria persona*, because if pleaded by attorney they admit the jurisdiction, as an attorney is an officer of the court, and he is presumed to plead after having obtained leave, which admits the jurisdiction.

NOTICE OF RESERVATIONS

That any and all individuals doing business as “judge”, “magistrate”, “attorney”, “clerk of court” or “deputy clerk of court” in the instant case do have all required credentials in proper order, presently assumes facts not in evidence. See 5 U.S.C. 2906 here.

In particular, see Article VI, Section 3, in the Constitution for the United States of America, as lawfully amended; 5 U.S.C. sections 2903, 2906 and 3331; 28 U.S.C. sections 530B (McDade Act), 453, 544 and 951; and, 44 U.S.C. 3512 (Public Protection Clause).

Gary Raymond Harvey also expressly reserves His “Right to Inspect” all Office of Personnel Management (“OPM”) Standard Form 61 (“SF-61”) APPOINTMENT AFFIDAVITS for compliance with the Paperwork Reduction Act (“PRA”) as lawfully amended.

Chiefly, said PRA requires that a valid Office of Management and Budget (“OMB”) control number be properly displayed at the upper right-hand corner on Page 1 of any and all such SF-61 APPOINTMENT AFFIDAVITS. Absent a valid OMB control number, any such SF-61 in question is a counterfeit credential also known as a “bootleg request” that belongs in the nearest trash can by intent of Congress.

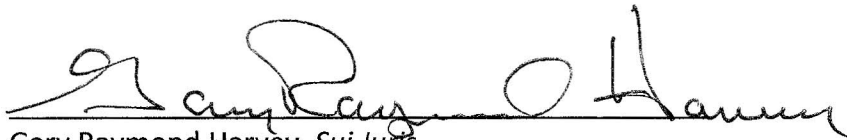
The requirement for valid OPM SF-61 APPOINTMENT AFFIDAVITS may also apply to any and all individuals claiming “Authority to administer” said SF-61 APPOINTMENT AFFIDAVITS. See 5 U.S.C. 2903 in this context.

The absence of a proper citation to 5 U.S.C. 2903 on any SF-61 is another reason rendering it a counterfeit credential, chiefly because such an omission was never approved by OMB as required by the Regulations implementing the PRA. See attached copy of admissions by OPM and OMB: OPM never requested nor obtained OMB approval of the current SF-61.

NEGATIVE AVERMENT

Gary Raymond Harvey hereby specifically denies that all individuals so affected by the Laws cited above do have all required credentials in proper order and in the proper legal custody of the designated legal custodians.

DATED this 1st day of February, 2013 A.D.

A handwritten signature in black ink, appearing to read "Gary Raymond Harvey". The signature is written in a cursive style with a horizontal line underneath it.

Gary Raymond Harvey, *Sui Juris*

All Rights Reserved without Prejudice (cf. UCC 1-308)

CERTIFICATE OF SERVICE BY ECF

1 Paul Andrew Mitchell, B.A., M.S.
2 Private Attorney General, 18 U.S.C. 1964
3 c/o Lake Union Mail
4 117 East Louisa Street
5 Seattle 98102-3203
6 WASHINGTON STATE, USA
7

8 *In Propria Persona*
9

10 **All Rights Reserved**
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15 United States District Court
16 Southern District of New York
17

18 CHRISTOPHER HEDGES <i>et al.</i> ,)	Case No. <u>1:12-cv-00331-KBF</u>
19)	
20 Plaintiffs,)	
21 v.)	
22)	
23 BARACK OBAMA <i>et al.</i> ,)	
24)	
25 Defendants.)	
26 -----)	
27)	
28 United States	)	NOTICE OF MISSING AND/OR
29 <i>ex relatione</i>	)	DEFECTIVE CREDENTIALS:
30 Paul Andrew Mitchell,)	
31	)	5 U.S.C. 2903, 2906, 3331;
32 Interpleader.	)	18 U.S.C. 4, 912, 1961 <i>et seq.</i> ;
33	)	28 U.S.C. 453, 951; and,
34	)	44 U.S.C. 3512(b).

35 **TO WHOM IT MAY CONCERN:**

36 The United States hereby notoriously appears specially, not generally,
37 and *ex rel.* Paul Andrew Mitchell, Private Attorney General, for the
38 limited purposes of: (1) providing formal Notice to all Proper
39 Parties, and also to all *other* recipients of the instant NOTICE, (2)
40 satisfying the legal requirements imposed by the Federal criminal
41 statute at 18 U.S.C. 4 (misprision of felony), and (3) establishing
42 probable cause calling for the conclusion that the suspects named
43 *infra* are engaged in a pattern of racketeering activities, in
44 violation of the Federal criminal statute at 18 U.S.C. 1962(d).

1 In the interests of expediting access to all relevant and
2 admissible documentation, Interpleader hereby notifies all concerned
3 of a single, consolidated electronic database which now contains
4 evidence of missing and/or defective credentials for past and present
5 Federal Court personnel employed by the U.S. District Court for the
6 Southern District of New York, and by the U.S. Court of Appeals for
7 the Second Circuit. In particular, see all "NAD" links *infra*:

8 <http://www.courtsandlaw.org/rsrs/commissions/evidence/folders.2004-03-16.htm#SDNY>
9 <http://www.courtsandlaw.org/rsrs/commissions/evidence/folders.2004-03-16.htm#SECOND>

10

11 **FATAL DEFECTS CONFIRMED IN OFFICE OF PERSONNEL MANAGEMENT**
12 **STANDARD FORM 61 ("SF-61") APPOINTMENT AFFIDAVITS**

13 Relator now confirms that the Office of Personnel Management
14 ("OPM") never requested nor obtained formal review and approval by the
15 Office of Management and Budget ("OMB") of three (3) distinct changes
16 that are plainly evident on the OPM SF-61 APPOINTMENT AFFIDAVITS now
17 in widespread use, after being made available in electronic form at
18 OPM's Internet website, to wit:

- 19 (1) there is no OMB control number at the upper right-hand corner;
20 (2) there is no paragraph at the bottom citing 5 U.S.C. 2903; and,
21 (3) the use of an electronic form in lieu of a hard-copy form.

22 Recent proper requests submitted under the Freedom of Information
23 Act ("FOIA") specifically sought documentary evidence that OPM has
24 duly complied with the published Regulations implementing the
25 Paperwork Reduction Act.

26 On August 6, 2012, OPM replied as follows:

27 ... [W]e do not have any responsive records here at OPM.
28

1 And, on August 23, 2012, OMB replied as follows:

2 *After careful review of your request, we conducted a search of*
3 *OMB's files and did not identify any records or documents that*
4 *are responsive to your request.*
5

6 Accordingly, pursuant to the legislative intent of the Paperwork
7 Reduction Act ("PRA"), Relator has every right to enforce that Act by
8 concluding that any and all OPM SF-61 APPOINTMENT AFFIDAVITS which
9 were never reviewed and timely approved by OMB, as required by
10 published Regulations implementing the PRA, are necessarily "bootleg
11 requests" belonging in the nearest trash can.

12 In other words, they are counterfeits!

13 Furthermore, the failure to produce any evidence of any duly
14 executed OPM SF-61 APPOINTMENT AFFIDAVITS has very far-reaching
15 criminal consequences for all Federal employees who are similarly
16 situated. See e.g. 18 U.S.C. §§ 912, 1341, 1951 and 1961 *et seq.*

17 In particular, concerning the consequences for Federal employees
18 who are claiming to be duly appointed to preside on a Federal Court,
19 Interpleader attaches a list of authorities concerning such employees,
20 and incorporates same by reference as if set forth fully here.

21 Those authorities make it very clear that, without taking all
22 required Oaths, one cannot become a judge either *de jure* or *de facto*,
23 such an individual is without authority to act, and all his acts as
24 such are void until he has taken the prescribed oath:

25 Without taking the oath prescribed by law, one cannot become a
26 judge either *de jure* or *de facto*, and such an individual is
27 without authority to act and his acts as such are void until he
28 has taken the prescribed oath.

29 [French v. State, 572 S.W.2d 934]

30 [Brown v. State, 238 S.W.2d 787]

31

1 A County Dog Catcher's signature could appear there; and,
2 without the additional knowledge which notice of this statute
3 provides, the Citizen is thereby deprived of information necessary to
4 perform a reasonable inspection of such a document, and to make a
5 reasonable determination of its legality and authenticity.

6 Such is the PRA's legislative intent!

7 Relator here argues that the citation to 5 U.S.C. 2903 should not
8 only be a mandatory requirement on all blank SF-61 APPOINTMENT
9 AFFIDAVITS duly approved by OMB.

10 In the spirits of timely notice, full disclosure, and full
11 compliance with the PRA, future revisions of OPM SF-61 should also be
12 enhanced with at least one additional line on which the individual
13 administering that form is required to cite the exact law of the
14 United States or local law which confers upon that individual
15 authority to administer that form.

16 The latter is really not too much to ask, in light of the obvious
17 vagueness which Interpleader has already documented at 5 U.S.C.
18 2903(a), in light of the published Regulations which implement the
19 PRA, and in light of the PRA's legislative intent.

20 Those implementing Regulations expressly mandate opportunities
21 for public comments *whenever* an OMB control number is up for mandatory
22 renewal every three (3) years.

23 In fact, those implementing Regulations also authorize any person
24 to request OMB review of any collection of information conducted by or
25 for any Federal government agency, as follows:

26

1 Any person may request OMB to review any collection of
2 information conducted by or for any agency to determine if, under
3 this Act and this part, a person shall maintain, provide, or
4 disclose the information to or for the agency. Unless the
5 request is frivolous, OMB shall, in coordination with the agency
6 responsible for the collection of information:
7

8 (1) Respond to the request within 60 days after receiving the
9 request, unless such period is extended by OMB to a
10 specified date and the person making the request is given
11 notice of such extension; and,
12

13 (2) Take appropriate remedial action, if necessary. 5 CFR
14 1320.14(c)

15 [underlined emphasis added]
16

17 **INCORPORATION OF ALL ATTACHED EXHIBITS**

18 Interpleader hereby incorporates by reference all attached
19 documents as Exhibits, and as if all were set forth fully here.

20
21 **VERIFICATION**

22 I, Paul Andrew Mitchell, *Sui Juris*, Relator in the above entitled
23 action, hereby verify under penalty of perjury, under the laws of the
24 **United States of America**, without the "United States" (federal
25 government), that the above statement of facts and laws is true and
26 correct, according to the best of My current information, knowledge,
27 and belief, so help me God, pursuant to 28 U.S.C. 1746(1)
28 (Constitution, Laws and Treaties of the United States are supreme Law
29 of the Land, notwithstanding anything in the Constitution or Laws of
30 Washington State to the contrary. See Supremacy Clause.)

31
32
33 Dated: September 17, 2012 A.D.

34
35
36 Signed: /s/ Paul Andrew Mitchell

37
38 Printed: Paul Andrew Mitchell, B.A., M.S., Relator *In Propria Persona*
39 Private Attorney General, 18 U.S.C. 1964(a)
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PROOF OF SERVICE

I, Paul Andrew Mitchell, *Sui Juris*, hereby certify, under penalty of perjury, under the laws of the **United States of America**, without the "**United States**" (federal government), that I am at least 18 years of age, a Citizen of ONE OF the **United States of America**, and that I personally served the following document(s):

NOTICE OF MISSING AND/OR DEFECTIVE CREDENTIALS:

- 5 U.S.C. 2903, 2906, 3331;
- 18 U.S.C. 4, 912, 1961 *et seq.*;
- 28 U.S.C. 453, 951; and,
- 44 U.S.C. 3512(b)

by placing one true and correct copy of said document(s) in first class United States Mail, with postage prepaid and properly addressed to the following:

Clerk of Court (3x)
U.S. Court of Appeals
40 Foley Square
New York City 10007
NEW YORK STATE, USA

WILLIAM J. OLSON, PC email: wjo@mindspring.com
370 Maple Avenue West, Suite 4
Vienna 22180
VIRGINIA, USA

Gary G. Kreep, Esq. [sic] email: usjf@usjf.net
U.S. Justice Foundation
932 "D" Street, Suite 2
Ramona 92065
CALIFORNIA, USA

Office of the U.S. Attorney email: benjamin.torrance@usdoj.gov
86 Chambers Street email: christopher.harwood@usdoj.gov
New York City 10007
NEW YORK STATE, USA

Courtesy Copies:

Friedman Harfenist et al., LLP email: sharfenist@fhkplaw.com
Attn: Steven J. Harfenist
3000 Marcus Avenue, Suite 2-E-1
Lake Success 11042
NEW YORK STATE, USA

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[Please see USPS Publication #221 for "addressing" instructions.]

Dated: September 17, 2012 A.D.

Signed: /s/ Paul Andrew Mitchell

Printed: Paul Andrew Mitchell, B.A., M.S., Relator *In Propria Persona*
Private Attorney General, 18 U.S.C. 1964(a)

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FREEDOM OF INFORMATION ACT REQUEST

December 27, 2011 A.D.

Disclosure Officer
U.S. Office of Personnel Management
FOIA Requester Service Center
1900 "E" Street, N.W., Room 5415
Washington 20415-7900
DISTRICT OF COLUMBIA, USA

Subject: Freedom of Information Act ("FOIA") Request

Dear Disclosure Officer:

This is a request under the Freedom of Information Act. I request that a **true and correct copy of the following documents** be provided to Me, without delay:

- (1) Regulations implementing the Federal statute at 5 U.S.C. 3331 as duly published in the *Federal Register* and/or the *Code of Federal Regulations* but not otherwise listed in the *Parallel Table of Authorities and Rules* revised January 1, 2011 (see attached);
- (2) materials submitted in compliance with 5 CFR 1320.5 to the Director of OMB for review of the Office of Personnel Management ("OPM") Standard Form 61 APPOINTMENT AFFIDAVITS as revised in June 1996 and August 2002 (copies attached), including but not limited to:
 - (a) the certification required under 5 CFR 1320.9;
 - (b) the proposed collection of information;
 - (c) the explanation for the decision that it would not be appropriate for the proposed collection of information to display an expiration date;
 - (d) the statement indicating that the proposed collection of information involves the use of automatic, electronic collection techniques;
 - (e) pertinent statutory authority, regulations, and such related supporting materials as OMB may have requested;
 - (f) the notice published in the *Federal Register* as required by 5 CFR 1320.5(a)(1)(iv);
 - (g) OMB's approval of the proposed collection of information including either the control number obtained from the Director to be displayed upon the collection of information, or evidence of the Director's decision to permit the collection of information to be used after June 1996 without a control number.

1 We incorporate as an essential part of this FOIA Request, all of the
2 following relevant excerpts from the *Code of Federal Regulations*
3 implementing the Paperwork Reduction Act, to wit:
4

5 [A]n agency shall not conduct or sponsor a collection of
6 information unless ... the collection of information displays a
7 currently valid OMB control number. 5 CFR 1320.5(b)(1)
8

9 In the case of forms ... sent or made available to potential
10 respondents in an electronic format, the agency places the
11 currently valid OMB control number ... on the first screen viewed
12 by the respondent. 5 CFR 1320.5(b)(2)(ii)(B)
13

14 [A]n agency shall not conduct or sponsor a collection of
15 information unless ... the agency informs the potential persons
16 who are to respond to the collection of information that such
17 persons are not required to respond to the collection of
18 information unless it displays a currently valid OMB control
19 number. 5 CFR 1320.5(b)(2)(i)
20

21 OMB will consider necessary any collection of information
22 specifically mandated by statute 5 CFR 1320.5(e)(1)
23

24 An agency may not make a substantive or material modification to
25 a collection of information after such collection of information
26 has been approved by OMB, unless the modification has been
27 submitted to OMB for review and approval under this Part. 5 CFR
28 1320.5(g)
29

30 OMB shall not approve any collection of information for a period
31 longer than three years. 5 CFR 1320.10(b)
32

33 Agencies shall provide copies of the material submitted to OMB
34 for review promptly upon request by any person. 5 CFR 1320.14(b)
35

36 Any person may request OMB to review any collection of
37 information conducted by or for any agency to determine if, under
38 this Act and this part, a person shall maintain, provide, or
39 disclose the information to or for the agency. Unless the
40 request is frivolous, OMB shall, in coordination with the agency
41 responsible for the collection of information:
42

- 43 (1) Respond to the request within 60 days after receiving the
44 request, unless such period is extended by OMB to a
45 specified date and the person making the request is given
46 notice of such extension; and,
47
- 48 (2) Take appropriate remedial action, if necessary. 5 CFR
49 1320.14(c)
50

1 I request a waiver of all fees for this request.

2

3 Disclosure of the requested information to Me is in the public
4 interest, because it is likely to contribute *significantly* to public
5 understanding of the operations and activities of the Federal
6 government, and is not *primarily* in My commercial interest.

7 See also 5 U.S.C. 552(a)(4)(B).

8

9 **If you are not the correct person to whom this FOIA request should be**
10 **directed, please forward it without delay to the correct person(s).**

11

12

13 Thank you for your consideration of this FOIA request.

14

15

16 Sincerely yours,

17

18 /s/ Paul Andrew Mitchell

19

20 Paul Andrew Mitchell, B.A., M.S.

21 Private Attorney General, Criminal Investigator and

22 Federal Witness: 18 U.S.C. 1510, 1512-13, 1964(a)

23 <http://www.supremelaw.org/decs/agency/private.attorney.general.htm>

24

25 **All Rights Reserved without Prejudice**

26

27 U.S. Mail:

28

29 Paul Andrew Mitchell, B.A., M.S.

30 c/o Lake Union Mail

31 117 East Louisa Street

32 Seattle 98102-3203

33 WASHINGTON STATE, USA

34

35 Attachments

36

37 Copy: U.S. Marshals, Judicial Security, Seattle, Washington State

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39 [See USPS Publication #221 for addressing instructions.]

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FREEDOM OF INFORMATION ACT REQUEST

December 27, 2011 A.D.

Disclosure Officer
Office of Information and Regulatory Affairs
The Office of Management and Budget
725 - 17th Street, N.W.
Washington 20503
DISTRICT OF COLUMBIA, USA

Subject: Freedom of Information Act ("FOIA") Request

Dear Disclosure Officer:

This is a request under the Freedom of Information Act. I request that a **true and correct copy of the following documents** be provided to Me, without delay:

- (1) Regulations implementing the Federal statute at 5 U.S.C. 3331 as duly published in the *Federal Register* and/or the *Code of Federal Regulations* but not otherwise listed in the *Parallel Table of Authorities and Rules* revised January 1, 2011 (see attached);
- (2) materials submitted in compliance with 5 CFR 1320.5 to the Director of OMB for review of the Office of Personnel Management ("OPM") Standard Form 61 APPOINTMENT AFFIDAVITS as revised in June 1996 and August 2002 (copies attached), including but not limited to:
 - (a) the certification required under 5 CFR 1320.9;
 - (b) the proposed collection of information;
 - (c) the explanation for the decision that it would not be appropriate for the proposed collection of information to display an expiration date;
 - (d) the statement indicating that the proposed collection of information involves the use of automatic, electronic collection techniques;
 - (e) pertinent statutory authority, regulations, and such related supporting materials as OMB may have requested;
 - (f) the notice published in the *Federal Register* as required by 5 CFR 1320.5(a)(1)(iv);
 - (g) OMB's approval of the proposed collection of information including either the control number obtained from the Director to be displayed upon the collection of information, or evidence of the Director's decision to permit the collection of information to be used after June 1996 without a control number.

1 We incorporate as an essential part of this FOIA Request, all of the
2 following relevant excerpts from the *Code of Federal Regulations*
3 implementing the Paperwork Reduction Act, to wit:

4
5 [A]n agency shall not conduct or sponsor a collection of
6 information unless ... the collection of information displays a
7 currently valid OMB control number. 5 CFR 1320.5(b)(1)

8
9 In the case of forms ... sent or made available to potential
10 respondents in an electronic format, the agency places the
11 currently valid OMB control number ... on the first screen viewed
12 by the respondent. 5 CFR 1320.5(b)(2)(ii)(B)

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14 [A]n agency shall not conduct or sponsor a collection of
15 information unless ... the agency informs the potential persons
16 who are to respond to the collection of information that such
17 persons are not required to respond to the collection of
18 information unless it displays a currently valid OMB control
19 number. 5 CFR 1320.5(b)(2)(i)

20
21 OMB will consider necessary any collection of information
22 specifically mandated by statute 5 CFR 1320.5(e)(1)

23
24 An agency may not make a substantive or material modification to
25 a collection of information after such collection of information
26 has been approved by OMB, unless the modification has been
27 submitted to OMB for review and approval under this Part. 5 CFR
28 1320.5(g)

29
30 OMB shall not approve any collection of information for a period
31 longer than three years. 5 CFR 1320.10(b)

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33 Agencies shall provide copies of the material submitted to OMB
34 for review promptly upon request by any person. 5 CFR 1320.14(b)

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36 Any person may request OMB to review any collection of
37 information conducted by or for any agency to determine if, under
38 this Act and this part, a person shall maintain, provide, or
39 disclose the information to or for the agency. Unless the
40 request is frivolous, OMB shall, in coordination with the agency
41 responsible for the collection of information:

- 42
43 (1) Respond to the request within 60 days after receiving the
44 request, unless such period is extended by OMB to a
45 specified date and the person making the request is given
46 notice of such extension; and,
47
48 (2) Take appropriate remedial action, if necessary. 5 CFR
49 1320.14(c)

50

1 I request a waiver of all fees for this request.

2

3 Disclosure of the requested information to Me is in the public
4 interest, because it is likely to contribute *significantly* to public
5 understanding of the operations and activities of the Federal
6 government, and is not *primarily* in My commercial interest.

7 See also 5 U.S.C. 552(a)(4)(B).

8

9 **If you are not the correct person to whom this FOIA request should be**
10 **directed, please forward it without delay to the correct person(s).**

11

12

13 Thank you for your consideration of this FOIA request.

14

15

16 Sincerely yours,

17

18 /s/ Paul Andrew Mitchell

19

20 Paul Andrew Mitchell, B.A., M.S.

21 Private Attorney General, Criminal Investigator and

22 Federal Witness: 18 U.S.C. 1510, 1512-13, 1964(a)

23 <http://www.supremelaw.org/decs/agency/private.attorney.general.htm>

24

25 **All Rights Reserved without Prejudice**

26

27 U.S. Mail:

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29 Paul Andrew Mitchell, B.A., M.S.

30 c/o Lake Union Mail

31 117 East Louisa Street

32 Seattle 98102-3203

33 WASHINGTON STATE, USA

34

35 Attachments

36

37 Copy: U.S. Marshals, Judicial Security, Seattle, Washington State

38

39 [See USPS Publication #221 for addressing instructions.]

40

1 **Authorities in re: Presidential Commissions**

2
3
4 When person has been nominated to office by President, confirmed
5 by Senate, and his **commission signed by President, with seal of**
6 **United States affixed thereto**, his appointment is complete.

7
8 [U.S. v. LeBaron, 60 U.S. 73, 19 How. 73]
9 [15 L.Ed. 525 (1856), **bold emphasis added**]

10
11
12 The **commissions of judicial officers** ... appointed by the
13 President, by and with the advice and consent of the Senate ...
14 **shall be made out and recorded in the Department of Justice under**
15 **the seal of that department and countersigned by the Attorney**
16 **General.**

17 [5 U.S.C. 2902(c), **bold emphasis added**]

18
19
20 Federal circuit and district judges are among the "other officers
21 of the United States" required to be nominated by the President
22 by and with the advice and consent of the Senate.

23
24 [Thomson v. Robb, 328 S.E.2d 136, 140, hn. 3]
25 [229 Va. 233 (Va. 1985)]

26
27
28 From this clause [2:2:2] the Constitution must be understood to
29 declare that all offices of the United States, except in cases
30 where the Constitution itself may otherwise provide, shall be
31 established by law.

32
33 [U.S. v. Maurice, 2 Brock, U.S., 96]
34 [26 Fed. Cas. No. 15,747]

35
36
37 ... [W]here the law requires a commission to be issued, the
38 **person selected is not entitled to the office until the**
39 **commission issues, and he cannot be legally qualified by taking**
40 **the required oath until he has received his commission.**

41
42 [Legerton v. Chambers, 163 P. 678, 32 Cal.App. 601]
43 [Magruder v. Tuck, 25 Md. 217]
44 [**bold emphasis added**]

45
46 The commission is in law *prima facie* proof of the right of the
47 judge to enter on and perform the duties of his office.

48
49 [State v. Montague, 130 S.E. 838, 190 N.C. 841]
50 [Sylvia Lake Co. v. Northern Ore Co., 151 N.E. 158]
51 [242 N.Y. 144, *cert. den.* 273 U.S. 695]

1 It [commission] is **the highest and best evidence of his right to**
2 **the office** until, on *quo warranto* or a proceeding of that nature,
3 is annulled by judicial determination.

4
5 [Thompson v. Holt, 52 Ala. 491]
6 [bold emphasis added]
7

8
9 Without taking the oath prescribed by law, one cannot become a
10 judge either *de jure* or *de facto*, and such an individual is
11 without authority to act and his acts as such are void until he
12 has taken the prescribed oath.

13
14 [French v. State, 572 S.W.2d 934]
15 [Brown v. State, 238 S.W.2d 787]
16

17
18 Law requires the judge selected to take an oath of office.

19
20 [U.S. ex rel. Scott v. Babb]
21 [199 F.2d 804 (7th Cir. 1952)]
22

23
24 Appointment was complete upon taking oath.

25
26 [Glavey v. U.S., 182 U.S. 595 (1901)]
27

28
29 Judges are required to take oaths.

30 [7 Op Atty Gen 303]
31

32
33 Oath was prerequisite to compensation of judges.

34
35 [7 Op Atty Gen 303]
36

37
38 The salaries of all judges of courts of the United States are due
39 from the date of appointment; but the party does not become
40 entitled to draw pay until he has entered on the duties of his
41 office, or at least taken his official oath; for, until then,
42 though under commission, he is not actually in office; and in
43 some cases, as that of the territorial judges of Oregon,
44 Washington, Kansas, and Nebraska, salary, though due from date of
45 appointment, cannot be drawn until the judge enters on duty in
46 the Territory.

47 [7 Op Atty Gen 303 *supra*]
48

49
50 Oath was prerequisite to official duties and salary.

51
52 [19 Op Atty Gen 219]
53

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SALARY OF MINISTER

By act of July 11, 1888, chapter 614, the office of chargé d'affaires to Paraguay and Uruguay, the salary of which was \$5,000 per annum, was abolished, and provision made for representing the United States there by a minister at \$7,500 a year. B., who at that time held the former office, was on the 11th of August, 1888, appointed minister. He received his commission at his place of duty on the 3d of October, 1888, and on that latter date took the official oath and entered upon the duties of his office as minister: *Advised* that B. is entitled to draw his salary as minister from the 3d of October, 1888, the date on which he qualified for the office and entered upon its duties, and not from the date of his appointment (Aug. 11, 1888).

[19 Op Atty Gen 219 *supra*]

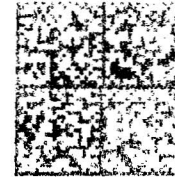
... [B]ut whatever form of oath is taken, the taking of the oath is a prerequisite to the entering upon the official duties or drawing salary therefor.

[19 Op Atty Gen 221 *supra*]

#

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D. C. 20503

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UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

August 6, 2012

[Name Redacted]
c/o Lake Union Mail
117 East Louisa Street
Seattle, WA 98102-3203

Re: FOIA Request

Dear [Name Redacted]:

This acknowledges receipt of your Freedom of Information Act request dated July 19, 2012 to the United States Office of Personnel Management (OPM). Your request seeking materials submitted in compliance with 5 CFR 1320.5 to the Director of the Office of Management and Budget (OMB) for review of the OPM Standard Form 61 APPOINTMENT AFFIDAVITS was received in our office on July 25, 2012. We are unable to process it, however, because we do not have any responsive records here at OPM.

Your request should be referred to the FOIA office at OMB as they are more likely to have the necessary records to satisfy your request. You may contact them at the following address:

Dionne Hardy, FOIA Officer
Office of Management and Budget
725 17th Street NW, Room 9026
Washington, DC 20503.

If you have any questions regarding your request, you may contact the FOIA Service Center by e-mail at foia@opm.gov or by calling 202-606-3642.

Sincerely,

A handwritten signature in black ink, appearing to be "Dionne Hardy", written over a horizontal line.

FOIA Coordinator



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

August 23, 2012

[Name Redacted]
c/o Lake Union Mail
117 East Louisa Street
Seattle, WA 98102-3203

Dear Mr. [Name Redacted]:

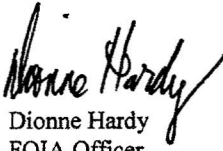
This responds to your Freedom of Information Act (FOIA) request to the Office of Management and Budget (OMB) dated July 19, 2012, and received in this office on August 6, 2012, and assigned tracking number 12-172. Your request seeks:

- (1) "Regulations implementing the Federal statute at 5 U.S.C. 3331 as duly published in the *Federal Register* and/or the Code of Federal Regulations but not otherwise listed in the Parallel Table of Authorities and Rules revised January 1, 2011;
- (2) materials submitted in compliance with 5 CFR 1320.5 to the Director of OMB for review of the Office of Personnel Management ("OPM") Standard Form 61 APPOINTMENT AFFIDAVITS as revised in June 1996 and August 2002, including but not limited to:
 - (a) the certification required under 5 CFR 1320.9;
 - (b) the proposed collection of information;
 - (c) the explanation for the decision that it would not be appropriate for the proposed collection of information to display an expiration date;
 - (d) the statement indicating that the proposed collection of information involves the use of automatic, electronic collection techniques;
 - (e) pertinent statutory authority, regulations, and such related supporting materials, as OMB may have requested;
 - (f) the notice published in the *Federal Register* as required by 5 CFR 1320.5(a) (1) (iv);
 - (g) OMB's approval of the proposed collection of information including either the control number obtained from the Director to be displayed upon the collection of information. or, evidence of the Director's decision to permit the collection of information to be used after June 1996 without a control number"

After careful review of your request, we conducted a search of OMB's files and did not identify any records or documents that are responsive to your request.

If you consider this to be a denial of your request, you may file an administrative appeal in accordance with OMB regulations, at 5 C.F.R. 1303.

Sincerely,



Dionne Hardy
FOIA Officer